

Appeal from a decision of the Arizona State Office, Bureau of Land Management, rejecting application A-18460 for conveyance of mineral interest.

Affirmed.

1. Applications and Entries: Generally -- Federal Land Policy and Management Act of 1976: Conveyances -- Federal Land Policy and Management Act of 1972: Sales

An applicant for conveyance of Federally owned mineral interests under sec. 209(b)(1) of FLPMA, 43 U.S.C. § 1719(b)(1) (1982), must show the surface of the land applied for is owned by the applicant. Where the applicant does not deposit the requested administrative costs as required by 43 CFR 2720.1-3(b)(1), the application is properly rejected.

APPEARANCES: Niles H. Thim, President, Niles H. Thim Corporation, for appellant.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Niles H. Thim Corporation has appealed from a decision of the Arizona State Office, Bureau of Land Management (BLM), dated February 28, 1985, rejecting its application under section 209 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1719 (1982), to purchase mineral rights to certain lands in Pinal County, Arizona, described as follows:

T. 10 S., R. 16 E., GSR Mer., Arizona  
Sec. 22, SW 1/4 NW 1/4, SW 1/4, SE 1/4;  
Sec. 24, E 1/2, E 1/2 W 1/2;  
Sec. 26, SW 1/4 NW 1/4;  
Sec. 27, NE 1/4, NW 1/4;

T. 10 S., R. 17 E.,  
Sec. 15, NE 1/4, NW 1/4, S 1/2;  
Sec. 17, All;  
Sec. 18, Lots 2, 3, 4, S 1/2 NE 1/4, SE 1/4 NW 1/4  
E 1/2 SW 1/4, SE 1/4;

Sec. 19, Lots 1, 2, NE 1/4, E 1/2 NW 1/4.

Appellant's application was filed with BLM on February 7, 1983. On February 18, 1983, BLM telephoned a representative of appellant and advised that the following lands were not included in the deed provided by appellant in support of the application:

T. 10 S., R. 16 E., GSR Mer., Arizona  
 Sec. 26, SW 1/4 NW 1/4  
 Sec. 27, SE 1/4 NE 1/4

T. 10 S., R. 17 E.  
 Sec. 15, NW 1/4 NW 1/4  
 Sec. 18, SE 1/4 SE 1/4

By letter dated March 3, 1983, BLM acknowledged receipt of appellant's application and asked appellant to furnish a letter confirming the deletion of the above-described lands from its application. <sup>1/</sup> In its letter, BLM informed appellant that it was also deleting T. 10 S., R. 16 E., sec. 22, SW 1/4 NW 1/4, NW 1/4 SW 1/4 from the application because the United States had not reserved the mineral estate in these lands when they were transferred from Federal ownership. In addition, BLM advised appellant that certain of the applied for lands were encumbered by mining claims. BLM further requested appellant to submit, within 60 days of receipt of the letter, \$750 in fees for preparing mineral reports and processing its application.

In its February 28, 1985, decision, BLM rejected the application because the requested fee was not submitted and the application was not perfected in accordance with the applicable regulations, 43 CFR 2720.1-2 and 2720.1-3. On appeal, appellant states only that BLM's decision is erroneous because "Niles Thim Corporation has the authority to deal on behalf of the surface owner of SW 1/4 NW 1/4 sec. 26 and SE 1/4 NE 1/4 sec. 27, T. 10 S., R. 16 E."

[1] Under section 209(b)(1) of FLPMA, 43 U.S.C. § 1719(b)(1) (1982), BLM is authorized to "convey mineral interests owned by the United States where the surface is or will be in non-Federal ownership." Section 209(b)(2) of FLPMA, 43 U.S.C. § 1719(b)(2) (1982), provides such conveyance "shall be made only to the existing or proposed record owner of the surface, upon payment of administrative costs and the fair market value of the interests being conveyed." Further, section 209(b)(3)(i) of FLPMA, 43 U.S.C. § 1719(b)(3)(i) (1982), states that "[b]efore considering an application for conveyance of mineral interests pursuant to this section -- (i) the Secretary shall require the deposit by the applicant of a sum of money which he deems sufficient to cover administrative costs \* \* \*." Implementing regulations provide that proof of ownership of the land shall be included in the application (43 CFR 2720.1-2(d)(2)) and that the application shall not be processed until the administrative costs are deposited (43 CFR 2720.1-3(b)(1)).

There is nothing in the record which indicates that the lands described in appellant's appeal are owned by appellant or that appellant deposited the

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<sup>1/</sup> The record indicates appellant did not submit the requested letter.

requested administrative costs. Appellant's mere assertion that it "has authority to deal on behalf of the surface owner" does not satisfy the ownership requirement. Absent a deposit of administrative costs, BLM was without authority to continue processing appellant's application and properly rejected it.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of Interior, 43 CFR 4.1, the decision appealed from is affirmed.

John H. Kelly  
Administrative Judge

We concur:

C. Randall Grant, Jr.  
Administrative Judge

R. W. Mullen  
Administrative Judge.

